

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, November 10, 2000

11:45 a.m.

Marriott at Metro Center
12th and H Street, N.W.
Washington, D.C. 20002

COMMITTEE MEMBERS PRESENT:

John T. Broderick, Jr., Chair
Douglas S. Eakeley (ex-officio)
Edna Fairbanks-Williams
Hulett H. Askew

BOARD MEMBERS PRESENT:

John N. Erlenborn
Nancy H. Rogers
Thomas F. Smegal, Jr.
F. William McCalpin
Maria Luisa Mercado
Ernestine P. Watlington

STAFF AND PUBLIC PRESENT:

John McKay, President
Mattie C. Condray, Senior Asst. General Counsel
Victor M. Fortuno, VP for Legal Affairs
Linda Perle, Sr Staff Attorney, Ctr for Law/Soc Policy
Michael Genz, Dir., Office of Program, Performance
Esther Lardent, President, Pro Bono Institute

STAFF AND PUBLIC PRESENT (con'd):

Randi Youells, VP for Programs
Laurie Tarantowicz, Assistant IG for Legal Review
John Hartingh, Special Assistant to the President
David Richardson, Treasurer/Comptroller of LSC
Alice Dickerson, Director of Human Resources
James Hogan, VP for Administration

C O N T E N T S

	PAGE
Approval of Agenda	4
Approval of the Minutes of the Committee's Meeting of September 18, 2000	4
Staff Report on the Status of Actions Relating to 45 C.F.R. Part 1628 and the Proposed Property Acquisition and Management Manual	6
Consider and Act on Potential Rulemaking Action Implementing the Findings of the Erlenborn Commission	6
Consider and Act on Report of the Regulations Review Task Force	27
Consider and Act on Other Business	40
Public Comment	42
MOTIONS: 4, 5, 22, 25, 42	

1 P R O C E E D I N G S

2 CHAIR BRODERICK: Good morning. Call the meeting
3 of the ops and regs together.

4 The first item on the agenda is the approval of the
5 agenda, and this is -- Mr. Erlenborn has said that maybe a
6 motion to amend it would be appropriate. And I asked him if
7 he would like to make the motion, and he declined.

8 M O T I O N

9 CHAIR BRODERICK: In any event, approval of the
10 agenda?

11 MR. ASKEW: So moved.

12 MS. MERCADO: Second.

13 CHAIR BRODERICK: All those in favor?

14 (Chorus of ayes.)

15 CHAIR BRODERICK: Motion passes.

16 Second item on the agenda is approval of the
17 minutes of the committee's meeting of September 18, 2000.

18 Those minutes are contained in your board booklet.

19 I've read them, they seem accurate to me, but maybe others
20 found things I missed.

21 M O T I O N

22 CHAIR BRODERICK: If not, would someone like to

1 make a motion to approve them?

2 MR. ASKEW: I would only say on page nine, the
3 motion to adjourn was made by Ms. Watlington and seconded by
4 Ms. Mercado. They were -- none of -- they're not members of
5 the committee.

6 MS. MERCADO: That's right. I --

7 MR. ASKEW: I think it's a mistake.

8 CHAIR BRODERICK: So technically, we're still in
9 session.

10 MR. ASKEW: That's a mistake. I made the motion
11 and then the second -- or we'd still be in session.

12 M O T I O N

13 CHAIR BRODERICK: I guess we're still in session.
14 Those corrections will be made. And with those corrections,
15 unless there are any other corrections to be made, I'd
16 entertain a motion to approve the minutes.

17 MR. ASKEW: So moved.

18 MS. FAIRBANKS-WILLIAMS: Second.

19 CHAIR BRODERICK: All those in favor?

20 (Chorus of ayes.)

21 CHAIR BRODERICK: Motion passes.

22 The third item on our agenda is a report from the

1 staff on the status of actions relating to rules concerning
2 the fund balances and property acquisition management and
3 disposition manual.

4 You'll recall the last time we met, in San
5 Francisco, with respect to the latter item, we agreed to some
6 amendments to the proposed notice, because there were
7 inconsistencies detected in the proposed rule. And I assume
8 those have been incorporated.

9 But in any event, our staff is here. And so Mr.
10 Fortuno, if you'd like to address this item?

11 MR. FORTUNO: Actually, you want to go ahead with
12 it?

13 MS. CONDRAY: Sure. On November 7th, which was
14 Tuesday, the Legal Services Corporation's final rule on
15 recipient fund balances was published in the Federal
16 Register. After a long process, it's finally out, it's
17 finally there, and it becomes effective on December 7, 2000.

18 I don't think that that's -- was chosen for a particular
19 day.

20 And we have copies of it for anyone who might want
21 it. I know everybody on the board has already seen it
22 repeatedly, but we do have the formal, official copy from the

1 Federal Register with us.

2 CHAIR BRODERICK: And every board member should
3 have gotten actually not one, but two copies of this report
4 that published as final so that there could be a final review
5 by everyone on the board in the event that anyone had any
6 last-minute comments.

7 We did hear from Mr. McCalpin on a couple of
8 points, and those things have been incorporated. So everyone
9 should have had an opportunity to review it in advance of its
10 being submitted for publication as final.

11 MS. CONDRAY: And the proposed Property Acquisition
12 and Management Manual was published for comment in the
13 Federal Register on September 26th of this year, and the
14 comment period closes on November 27th.

15 So we are at the point of -- the period remains
16 open. We are waiting and anticipating, getting comments, and
17 as soon as those come in, we will start working on the
18 comments and developing what we want to do for the final.

19 CHAIR BRODERICK: All right, thank you. You don't
20 require any action from the committee?

21 MS. CONDRAY: No.

22 CHAIR BRODERICK: Purely reporting. I -- are there

1 any questions?

2 (No response.)

3 CHAIR BRODERICK: If not, I would like to move to
4 the next item on our agenda, which is to consider and act on
5 potential rulemaking action implementing the findings of the
6 Erlenborn Commission.

7 And as I think everyone knows, Mr. Erlenborn
8 chaired a commission, which was authorized by this
9 corporation in November of 1998 to look into the present
10 requirement for the representation of eligible aliens by the
11 legal services community. And he conducted hearings around
12 the United States and authored a very thoughtful report which
13 was accepted by this corporation.

14 And the need that's perceived now is to amend the
15 regulations of this corporation. Perhaps not to change them
16 in any material or substantive way, but to give definition to
17 what may be in those regulations a clear definition on this
18 whole issue of presence.

19 And I understand, Mr. Fortuno, that this activity
20 would be undertaken in keeping with our new rulemaking
21 protocol, which allows this committee, under limited
22 circumstances, to approve notice and comment rulemaking, even

1 though the new protocol really puts the emphasis on
2 negotiated rulemaking. And it's for that reason that you're
3 here today to talk about this item.

4 MR. FORTUNO: That's correct. We're here to report
5 that the board may recall since 1983, the corporation's
6 Appropriations Act and its regulation on the representation
7 of aliens have required that an alien be present in the
8 United States in order to be eligible for legal assistance
9 from an LSC grantee.

10 Neither the Appropriations Act nor our regulation
11 defines present in the United States. And that was a task
12 given to the Erlenborn Commission, upon which they conducted
13 hearings and deliberated at some length, and produced a
14 report which, I might add, is going to be published in the
15 Georgetown University Law Journal -- the Georgetown Law
16 Center Journal on Immigration Law --

17 MS. CONDRA: The Georgetown Immigration Law
18 Journal.

19 CHAIR BRODERICK: Next month. And -- yes, what she
20 said. No, the Georgetown Immigration Law Journal will be
21 publishing it in an issue which should be coming out next
22 month.

1 The report reached a conclusion, or made a
2 recommendation as to the appropriate interpretation of the
3 phrase, "present in the United States." The report was
4 presented to the board, the board accepted the report, and
5 management has implemented the recommendation, by way of a
6 program letter.

7 However, what remains to be done is for the board
8 to take up the issue for purposes of determining whether it
9 wants to clarify the definition of that phrase, "present in
10 the United States," in the regulation itself. And that's
11 what we're proposing be taken up, because so much work has
12 gone into this already. There were public hearings, written
13 submissions, oral testimony. It seemed not a good use of
14 your time to go through the lengthier process, but instead to
15 opt for the shorter notice and comment rulemaking.

16 An ROP was generated pursuant to the new rulemaking
17 protocol, and has been circulated. Unfortunately, it didn't
18 make its way through the system to get all the necessary
19 approvals until earlier today.

20 We do have the document in hand, and it recommends
21 that we proceed with notice and comment rulemaking, and
22 bypass what we have described as our default position on

1 rulemaking, that is, negotiated rulemaking.

2 I will, at this point, turn to Mattie, see if she
3 has anything to add on that, and we'd be happy to answer any
4 questions you have on that -- you decide whether to authorize
5 the proceeding as a notice and comment rulemaking.

6 MS. CONDRAV: I suppose the only further
7 information I can provide, in terms of the justification of
8 the recommendation of going notice and comment is since we
9 don't perceive the proposed substance of the regulation to be
10 controversial in any way, given that this has been the
11 corporation's policy for some time since the adoption of the
12 Erlernborn commissions report's definition of presence, and
13 that we see the change to the regulation as merely clarifying
14 the regulation to make express what we already believe the
15 regulation to require, we already believe the statute to
16 require.

17 And that therefore, notice and comment is
18 sufficient and appropriate, rather than the expense of the
19 resources of a negotiated rulemaking, which is much better
20 suited towards a subject where there is really more need for
21 a give and take and an exploration of issues than is
22 warranted here.

1 CHAIR BRODERICK: All right. Any members of the
2 committee have any questions on this issue? Bucky?

3 MR. ASKEW: Would it be appropriate to ask
4 Congressman Erlenborn if he believes this is the right way to
5 proceed on this matter?

6 MR. ERLENBORN: I do, however, with a different
7 rationale than I've heard from staff. I think this is
8 controversial. And I think we will get response if we ask
9 for comments from the public. And they will probably be very
10 pointed comments, and controversy will arise.

11 But I think the other way to go, which was the
12 negotiated rulemaking, couldn't work by its very nature. It
13 would not fit this kind of a situation where you are going to
14 have some strong opinions voiced by various people. And I
15 don't think you'll ever be able to negotiate and get an
16 agreed regulation.

17 So I agree with the process, but with a different
18 reasoning.

19 MR. EAKELEY: Of course, those voices have already
20 been raised and heard and considered.

21 MR. ERLENBORN: They've been raised and heard and
22 considered. And if they had the right to file a lawsuit, we

1 would have had lawsuits filed.

2 But I think in this situation, let us say that a
3 grower is being sued by one of the people who worked for him,
4 a worker. And a Legal Services lawyer represents the worker.

5 I don't think that there's any standing on the part of the
6 grower to raise the issue.

7 And that's why nothing has happened. That doesn't
8 mean that everybody out there has now accepted this.

9 MR. MCCALPIN: As a follow-up to Mr. Erlenborn's
10 remark, my aging and failing memory seems to indicate to me
11 that there has been some adverse congressional reaction to
12 this report. Has there?

13 MR. ERLENBORN: Surprisingly little. And --

14 MR. MCCALPIN: Hasn't some congressman commented
15 negatively about it?

16 MR. ERLENBORN: There have been negative comments,
17 but I think the usual thing that has happened here is there's
18 been a request for a copy of the report. Some of those who
19 commented negatively have never changed their mind.

20 But very often, when they got the report and read
21 it, that was the last that we heard from them.

22 CHAIR BRODERICK: Any other questions or comments

1 by members of the committee or members of the board,
2 generally?

3 MR. FORTUNO: Just to be clear for the record, the
4 protocol provides that once the ROP is developed, it will be
5 submitted to the committee. The committee, acting through
6 its chair, shall consult with the president before deciding
7 whether to proceed as recommended.

8 Since the protocol wasn't ready for distribution
9 until just before the meeting started, it seemed appropriate
10 for this discussion to take place so that the chair has the
11 benefit of the thoughts of the committee before taking what
12 action he's required to take under the protocol with the
13 president of the corporation.

14 CHAIR BRODERICK: Under the protocol, Mr. Fortuno,
15 does it require a vote of the committee or a vote of the
16 board?

17 MR. FORTUNO: No. Actually, what the protocol says
18 is that -- and I'm quoting here -- "Once the ROP is
19 developed, it will be submitted to the committee. The
20 committee, acting through its chair, shall consult with the
21 president before deciding whether to proceed as recommended."

22 Since the protocol didn't go to the committee in

1 advance of the meeting, it seemed appropriate to have this
2 discussion here. But the action is actually for the
3 committee chair, in consultation with the president. It's
4 the committee acting through the committee chair, in
5 consultation with the president.

6 I have copies of the protocol, if anyone would care
7 to take a look at it.

8 CHAIR BRODERICK: I think you probably should
9 circulate that.

10 MR. MCKAY: This is the first time, of course, that
11 we've had a matter come before the board under the new
12 protocol. I think all of us would have just preferred, by
13 luck of the draw, that it be something that we would be
14 recommending.

15 The so-called default position of negotiated
16 rulemaking, my view is actually a little bit different than
17 John's and our staff here, slightly different, which is I
18 think the commission itself has had an extensive dialogue
19 that has already occurred now on this issue.

20 We have, through the commission, received a great
21 deal of information and position from the community with --
22 open to all comers. And I think that makes it a little bit

1 different situation than we normally would see.

2 I agree with Congressman Erlenborn. There's no
3 question, this will be controversial. I understand, Victor,
4 the action for the committee under our protocol to be to
5 instruct the staff to proceed with rulemaking, and that there
6 is a decision to be made by the committee and, ultimately I
7 presume, the board as to whether to initiate rulemaking at
8 this point in response to the Erlenborn commission report.

9 MS. CONDRAV: That decision is made jointly by the
10 committee chair and you, with the committee chair acting upon
11 the wishes of the committee.

12 MR. EAKELEY: The committee, through the
13 chair --

14 MR. MCKAY: I don't think -- there's no requirement
15 that the committee take a vote.

16 MS. CONDRAV: No.

17 CHAIR BRODERICK: And it seems to me that with the
18 approval of the committee members, if that's received, then I
19 would then meet with Mr. McKay and proceed under this
20 protocol.

21 MR. EAKELEY: Well, speaking as an ex-officio
22 member of the committee, I think it's the sense of this

1 member of the committee that the chair proceed as proposed.

2 MR. MCKAY: Well, just -- may I -- I hope this is
3 an unusual event, because this is -- I think the policy says
4 once the board has agreed on a potential subject for
5 rulemaking, then the ROP is developed.

6 And so I read that to mean -- and I do recall this
7 discussion -- that the board should instruct the staff --

8 CHAIR BRODERICK: So the staff --

9 MR. MCKAY: -- to begin the rulemaking process, and
10 then the ROP is the board's recommendation to the committee,
11 with a decision being made by the committee chair and the
12 president.

13 And so the actual impetus now should come, I think,
14 from the committee. I would suggest that there ought to be
15 direction from the committee and the board to commence the
16 rulemaking that follows the Erlenborn commission report.

17 MS. CONDRAV: If I may, I believe that we were --
18 we proceeded with the development of the rulemaking options
19 paper on the basis of the prior board action adopting the
20 report, adopting the findings of the commission, and our
21 previous understanding that there was an interest then at
22 some point taking it up as regulation. That's why we ended

1 up doing it in this order, but --

2 CHAIR BRODERICK: This --

3 MS. CONDRAY: -- if that's incorrect, I apologize.

4 But there was certainly no intention to start out by
5 ignoring the rulemaking protocol. The underlying assumption
6 of developing was that there was a previous understanding --

7 CHAIR BRODERICK: So the staff takes the view that
8 the first step here, which is authority from the board, that
9 there's an area that's appropriate for rulemaking has already
10 been extended.

11 MS. CONDRAY: That was my understanding.

12 CHAIR BRODERICK: And therefore, you've now come to
13 the committee, assuming that you have the approval of the
14 board to go forward, asking for the committee to form a
15 consensus so that I, in turn, can deal with Mr. McKay
16 directly.

17 MR. FORTUNO: We could, it seems to me, to be on
18 the safe side, since the item is on the agenda as an action
19 item, take a vote of the committee on the question of whether
20 to proceed with the rulemaking on this subject.

21 We've explained the reason why staff would
22 recommend a rulemaking, and are prepared to answer any

1 questions you might have on the subject.

2 Once that vote is taken, then the committee chair,
3 acting for the committee, would work with the president on
4 the decision of whether to proceed with a negotiated
5 rulemaking, or notice and comment rulemaking.

6 Certainly, there could be discussion on that point
7 so that the chair is informed as to the views of the
8 committee. But the vote to be taken would be a vote to
9 proceed with a rulemaking. The next step would then be a
10 consultation between the president and the chairman of the
11 committee.

12 CHAIR BRODERICK: Maria?

13 MS. MERCADO: Yes. No, I just wanted to make sure
14 that the fact that the Erlenborn commission has met and made
15 recommendations does not in and of itself comply with the
16 rulemaking protocol. I think it's still necessary, under the
17 rulemaking protocol, that the board agree on a potential
18 subject for rulemaking under which three of seven -- in the
19 rulemaking protocol that we've had, the board still has to
20 officially sanction whatever rulemaking you have to do.

21 You can't bypass that just because you had a committee
22 meeting or a commission or recommendations or anything like

1 that, because they may or may not require to have rulemaking
2 develop out of that particular commission report that came
3 out that the board did on any subject.

4 So we have to be very clear that on a particular
5 issue that came out from that commission or committee report,
6 that the board actually sanction a particular rulemaking.
7 And I think in order to make sure that we are complying with
8 the rulemaking protocol, that we ought to go ahead, and as a
9 board, approve the rulemaking protocol or the recommendation
10 that the Erlenborn commission made regarding the issue of
11 what the President of the United States means.

12 CHAIR BRODERICK: I think I'm inclined to agree
13 with that comment, but Bucky --

14 M O T I O N

15 MR. ASKEW: I would like to make a motion that this
16 committee recommend to the board that rulemaking be -- to
17 implement the recommendations of the Erlenborn commission,
18 and that that be on the agenda for tomorrow's board meeting.

19 MS. FAIRBANKS-WILLIAMS: Second.

20 CHAIR BRODERICK: May I -- can I just have a point
21 of clarification? And I haven't read this protocol in a
22 while, but correct me if I'm wrong, I thought the way this

1 was to work is that the board was to identify an area -- an
2 appropriate area for rulemaking. The staff would then
3 prepare an options paper.

4 That would then be presented to this committee, the
5 ops and regs committee. And if there were approval from the
6 ops and regs committee to go forward, the chairman would then
7 meet with the president of this corporation.

8 Is that not the way it works?

9 MR. FORTUNO: The -- I'm sorry, I was in the middle
10 of a conversation, so I may have missed something.

11 CHAIR BRODERICK: I'm just trying to find out where
12 the horse and the cart --

13 MS. CONDRAY: I think the point of confusion here
14 has come from -- because this is kind of the first thing
15 through the box, whether the board's previous action in
16 adopting the findings of the Erlenborn commission report, and
17 the discussion at that time, and subsequently about making
18 that into a rulemaking, whether that provided a sufficient
19 basis to say that that first step had been completed, and
20 then now we're at the second step, the rulemakings options
21 paper.

22 CHAIR BRODERICK: Okay. So I am right about it.

1 MS. CONDRAV: Yes.

2 CHAIR BRODERICK: The board is supposed to agree
3 that a certain area is subject to rulemaking. The options
4 paper is developed, it comes to the committee. The
5 committee, acting through a chair, depending on the
6 committee's response, would then meet with the president.

7 MS. CONDRAV: Correct.

8 CHAIR BRODERICK: The issue, I guess, is that --
9 before us now, is whether or not the boards action, which is,
10 you're suggesting, somewhat implicit, was sufficient to
11 generate an options paper, sufficient to bring it here, so
12 that we can then meet with the president of the corporation.
13 And so I don't know what comment there is around the table
14 on that.

15 MR. ERLNBORN: Mr. Chairman?

16 CHAIR BRODERICK: Yes.

17 MR. ERLNBORN: It would seem to me that you could
18 reach the conclusion that the approval, or the acceptance of
19 the commission report was board action.

20 But I think there could be question, and I see no
21 reason to leave that open to question when the procedure, I
22 think, would be quite proper for this committee to adopt the

1 motion that's been made by the gentleman from Georgia, and
2 then I think it's fully within the notice provisions on the
3 agenda of the board tomorrow.

4 And so it could be done, and there would be no
5 question about it being done properly then.

6 CHAIR BRODERICK: All right --

7 MR. ASKEW: I would agree with that, and I would --
8 but I would also say that this is not a model for how we're
9 going to do this in the future.

10 CHAIR BRODERICK: I hope not.

11 MR. ASKEW: That typically, we will be having the
12 options paper presented to the board, but we don't need to do
13 that in this case. We do need to adopt a motion here, and I
14 think a motion before the board can proceed, using the
15 Erlenborn commission as a
16 background --

17 CHAIR BRODERICK: Could you restate your motion?
18 If you can't --

19 M O T I O N

20 MR. EAKELEY: No, I can restate it. The motion is
21 that the committee recommend to the board that the board
22 agree that the recommendations of the Erlenborn commission

1 represent a potential subject for rulemaking, and to submit
2 it to the office legal affairs, pursuant to the rulemaking
3 protocol.

4 MR. ASKEW: That's what I was going to say.

5 MR. EAKELEY: You already said it once, I'm just
6 repeating it.

7 CHAIR BRODERICK: Is there a second to the motion?

8 MS. FAIRBANKS-WILLIAMS: Second.

9 CHAIR BRODERICK: All those in favor?

10 (Chorus of ayes.)

11 CHAIR BRODERICK: All those opposed?

12 (No response.)

13 CHAIR BRODERICK: Motion carries.

14 MR. FORTUNO: If I may, Mr. Chairman, just a point
15 of clarification, so that I'm clear. So tomorrow, this is
16 the recommendation of the committee? So tomorrow, as part of
17 the committee report to the board, the recommendation will be
18 made. The agenda item for the board tomorrow on the
19 committee's report is an action item.

20 So the board, then, is in a position to act on the
21 recommendation of the committee. And at that point, it
22 follows the normal course, consultation with the president,

1 and whatnot?

2 CHAIR BRODERICK: Yes.

3 MR. FORTUNO: Okay.

4 CHAIR BRODERICK: That's what I would anticipate.

5 MR. FORTUNO: Thank you.

6 CHAIR BRODERICK: That's what I would anticipate.

7 Thank you.

8 If there's no further comment on that, I'd like to
9 go to item five, which is, "Consider and act on Report of the
10 Regulations Review Task Force," and I'm not sure what action
11 we need to take, if any.

12 But maybe you could explain to us, Mr. Fortunio,
13 where that committee is in its review.

14 MR. FORTUNO: Yes. There is no action proposed.
15 It's actually a report on the activities of the task force
16 which is comprised of LSC staff.

17 I'll actually let Mattie report on it. We are both
18 on that committee, as are any number of other people on
19 staff, including Randi Youells. And the inspector general's
20 office has a representative on the committee. The counsel to
21 the inspector general serves as an IG rep on that committee.

22 The committee has met once, has decided to publish

1 a notice in the Federal Register informing the public of the
2 work of the committee, and asking for comments of the public,
3 and also settled on a tentative time frame for reporting back
4 to the board the work of the committee, essentially a top-to-
5 bottom review of the regulations in effect now at LSC.

6 The regulations, as you might imagine, over time
7 developed conflicts with one another and layer after layer
8 imposed -- create problems that need to be reviewed from time
9 to time, where we take a step back, and ensure that they're
10 consistent, free of conflict, and in fact, do implement the
11 will of the congress without imposing any greater burdens
12 than are necessary to carry out the purposes of the Act as
13 expressed by the congress and are organic legislation and the
14 appropriations acts.

15 But I will let Mattie go ahead and add anything she
16 has on that point. I may have stolen her thunder, for which
17 I apologize.

18 MS. CONDRA: I think you pretty much did. The
19 only other thing I guess I can say is that the -- we've just
20 kind of -- we're just getting started, we're going to kind of
21 put -- and we do plan to put together a report for you for
22 the committee with our findings and with some recommendations

1 towards where we go on a substantive basis, once we've
2 reviewed the regs, what would be a likely place to start with
3 rulemakings.

4 And we hope to have that report to the board. Our
5 plan is for the March board meeting.

6 CHAIR BRODERICK: All right.

7 MS. FAIRBANKS-WILLIAMS: And that was my question,
8 so you answered it.

9 CHAIR BRODERICK: And I'm going to open up to any
10 questions. The only comment I would have, you know, since
11 this is an agenda, obviously it's published and people rely
12 on it.

13 When it said, "Consider and act," it would
14 potentially be misleading to someone reading this that we
15 were going to take some action here at this committee, or
16 that the board itself was going to take some action.

17 And I think this is more of a status report than a
18 consider-an-act, and I just -- I was just concerned about
19 that. Mr. McCalpin?

20 MR. MCCALPIN: Is there any member of the task
21 force who is not an employee of the corporation?

22 MR. FORTUNO: No.

1 MS. CONDRAY: No. No, this, at the moment, is
2 currently an internal staff project, and we've got the
3 employees working on it from their own perspective. The
4 individual employees within our program's office are
5 consulting with their colleagues.

6 And although we are doing -- to the extent we have
7 a public notice -- we are -- we're starting inside and then
8 looking outside.

9 MR. FORTUNO: And the group itself does have
10 representatives from all -- virtually all components of the
11 corporation, office of legal affairs, office of inspector
12 general, office of performance, program performance, the
13 office of compliance and enforcement, and the office of
14 information management.

15 CHAIR BRODERICK: Any other questions on this
16 agenda item? Maria?

17 MS. MERCADO: Actually, my question was similar to
18 Bill's, as far as the task force, what committee members it
19 was made out of, whether it had any outside members of other
20 natural groups that work on regulations as we do.

21 And I wonder at what point -- I mean, prior to
22 putting the notice, would it be helpful in sort of preventing

1 some of the redundance and our having to -- to be able to
2 have some of those members in the initial take and review of
3 the regulations, rather than coming in a later point. I
4 mean, I'm just trying to --

5 MS. CONDRA: Well, I guess I can fill you in a
6 little more on our first meeting. Our plan of action, as it
7 were, was although it is a staff effort and the staff is on
8 the task force, by publishing not just the -- I mean, we
9 obviously planned to have a public notice so that everybody
10 out there knows and can provide written comments -- but we do
11 also plan to have informal meetings with anybody who is
12 interested in coming in and talking to us about those.

13 So it's not an exclusionary process. It's a staff
14 effort, and that's how we see it, but we obviously plan to
15 canvas the field, because that's where people -- that's where
16 the rubber hits the road, to go back to my old transportation
17 law days.

18 MR. MCCALPIN: But the recommendations will be made
19 entirely by employees of the corporation?

20 MS. CONDRA: Well, the final recommendations of
21 the staff task report to the committee. But obviously they
22 will reflect a variety of opinions taken in and then the

1 report will be made to the committee, and then the committee
2 will then determine what direction it wants to take, whether
3 it wants more information on any particular subject, whether
4 it wants to move ahead with the development of an agenda for
5 rulemaking, whether there is any specific topics that it
6 wants to then determine to move ahead with on rulemaking.

7 I mean, this is an information-gathering process to
8 provide the tools to the committee to do the committee's
9 work.

10 MR. MCCALPIN: This is not the collegiality which I
11 mentioned.

12 CHAIR BRODERICK: Well, I think I understand what's
13 being said here, and I think at some point it is appropriate
14 for the corporation staff, since we're in charge of
15 regulations, to examine those regulations where there's broad
16 input. And I think, speaking as chairman of this committee,
17 I would encourage you to have very broad input. But I also
18 understand that you're not going to be conducting public
19 hearings in that sense.

20 We may choose to down the road, but I think in the
21 first instance, what's been defined here seems pretty
22 sensible to me, as long as they reach out to the field and

1 others who are interested, and I have every confidence you'll
2 do that. Maria?

3 MS. MERCADO: Yes. No, I do want to make sure that
4 that's in there, because again, in some of the conversations
5 with President McKay, in looking at, you know, making sure
6 that you don't have this beltway mentality versus what the
7 field -- what's actually going on, and some of those
8 regulations, unfortunately I think -- I mean, I can sort of
9 think of some of the offices where maybe, because they
10 haven't had that constant day-to-day issue with how a
11 particular regulation affects the program or the delivery to
12 legal services to a client community, they may not think that
13 that is a part of a regulation that needs to be dealt with,
14 just by the nature of the fact that they haven't had that
15 input.

16 And so I would hope that even though your committee
17 is solely based of employees within the corporation, that you
18 do reach out to get information from your fields and from
19 other groups, like the ABA, or the CLASP, or NLADA, or other
20 folks on particular issues that may have been troublesome and
21 they may have perhaps not allowed us to do the kind of work
22 that we needed to do for our clients.

1 MS. CONDRAY: Oh, I think that's very much the
2 anticipation.

3 CHAIR BRODERICK: I suspect you would tell us in
4 March, when this report is submitted, those areas that were
5 the most controversial, where there was the most dissention,
6 so that we would be aware of that.

7 And I would encourage you, consistent with Mr.
8 McCalpin's concerns, which I think all of us have, that this
9 not be perceived as an inside deal, that you look at and
10 discuss with the people who are most impacted, not just the
11 grantees, but the clients who deal with some of this as well,
12 that you give full appreciation of what problems may exist
13 and what we may be able to do. And I have every confidence
14 that you will do that. Mr. Eakeley?

15 MR. EAKELEY: My mother said I was born impatient,
16 but is there -- might it be advisable to bring to the board
17 at the next -- bring to the committee at the next board
18 meeting, which is in January, initial recommendations from
19 the task force with respect to merging priorities if they are
20 sufficiently visible and cognizable so that we can get to
21 work on the fix before we're gone?

22 MR. FORTUNO: I think when the task force got

1 together and reviewed or assessed what lie before us, it was
2 felt that the project is fairly daunting, and that even a
3 March time frame for a report was fairly ambitious. And we
4 asked everyone for a commitment, because we realized that it
5 was going to take a real commitment to be able to get this to
6 you by March.

7 We can get a report to you in January, interim or
8 otherwise, but I think it'll reflect --

9 MR. EAKELEY: I wasn't really looking for a
10 comprehensive report that reports on the review of all
11 regulations. I was -- what I had in mind was, do we have to
12 wait until March to consider clear priority regulatory
13 reforms that could and should be undertaken sooner?

14 MR. FORTUNO: I think -- it appeared that the
15 president wished to say something there, so I was deferring
16 to him, but I guess not.

17 I think there's no reason why we shouldn't be in a
18 position to come back to you with something. Just how
19 extensive that will be is unclear at this point, but I think
20 certainly we can come back to you with a recommendation of
21 sorts in January.

22 I think that the committee will also be, in

1 January, taking up the property management -- property
2 acquisition and management manual, which itself will be a
3 challenge for the committee. It'll be a lot of work to do on
4 that, but --

5 MR. EAKELEY: I'm sorry to interrupt, but I think
6 that proves my point, to a certain extent. I realize it
7 would be great to have a comprehensive report that said,
8 "These are the regulatory fixes that are required," but is
9 that property manual the most important regulatory reform
10 confronting this board, and are there others?

11 MR. MCKAY: I think that there -- let me just
12 remind committee members and board members that what we're
13 attempting to undertake here, at the direction of the board,
14 is a top-to-bottom review of our regulatory process.

15 And I would add to Victor and Mattie's presentation
16 that the key to -- we're also looking at trying to alleviate
17 unnecessary paperwork burden on field programs.

18 We have a lot of expertise at the corporation. I
19 want to say to Bill and other committee members, I think this
20 is among the most open projects that we have undertaken.

21 I asked that our committee -- any project that
22 involves outside involvement involves first, a staff analysis

1 and recommendations. At the very beginning of this process,
2 I asked that that be opened up.

3 We've had, already, contributions from CLASP and
4 NLADA. They're well-aware of this project. This is our
5 staff process, which we decided to open up -- normally it
6 would not be open -- to make initial recommendations. And so
7 we published the notice, we made it very clear we're
8 undertaking this responsibility.

9 When it's -- when we're at the point in which the
10 committee is recommending the input, it will be even more
11 open, we will have some, I'm sure, bodies involved in the
12 recommendation process, and then it goes into our rulemaking
13 protocol, which is very, very open.

14 So I think this is a good way to proceed. We
15 already have consulted heavily outside the organization, with
16 some written discussion about how we ought to proceed, and we
17 will do so in a continuously open fashion, because this all
18 reflects how it impacts on the field. That's our objective.

19 And I think there may be, Doug, by the time we get
20 to January, some low-hanging fruit, if you will, that comes
21 pretty clear, and we ought to be able to report to you on
22 that. And we will have had reports from folks outside the

1 organization that are fully informed of our work, and I think
2 we'd be ready to bring it to the committee at that time.

3 CHAIR BRODERICK: All right, thank you. Bill?

4 MR. MCCALPIN: May I remind -- reach back into
5 ancient history for the task force -- that you are not
6 writing on a blank slate. This exact same thing was done
7 almost seven years ago by the ops and regs committee, set up
8 a list of priorities of review of the regulations that were
9 in effect at that time.

10 Many of the regulations on that list have been
11 addressed in the meantime. There are still some which have
12 not been addressed from that original list. And I think it
13 would be useful to go back into the records of the ops and
14 regs committee and get that material and see where we were
15 and where we are, and what remains to be done from the
16 initial list, as well as the new problems that have cropped
17 up in the meantime.

18 MR. FORTUNO: And not only was a list of priorities
19 developed, but in fact, some work was done on regulations
20 that have not made it all the way through the process.

21 MR. MCCALPIN: That's correct.

22 MR. FORTUNO: That was overtaken by the

1 developments in 1996. So we do have the benefit of that
2 work, in addition to the priorities developed, and those are,
3 of course, being taken into account, factored in by the task
4 force, no question about that.

5 CHAIR BRODERICK: Any other questions? Comments?
6 Observations?

7 (No response.)

8 CHAIR BRODERICK: Hearing none, I'll move on. But
9 I think the chairman had some very good thoughts. If it's
10 possible in January to give us some sense of where that is
11 headed, and where the priorities are, even though you won't
12 be able to give us chapter and verse, perhaps, I think would
13 be helpful.

14 And of course, I expect you'll be in close contact
15 with our committee as you go forward.

16 MR. FORTUNO: Yes. And we'll be back in January
17 with what is it, the low-hanging fruit.

18 MS. MERCADO: Or tip of the iceberg, one of the
19 two.

20 CHAIR BRODERICK: Okay. The next item is consider
21 and act on other business. I know of none, unless anyone
22 knows of any.

1 MR. MCCALPIN: Could I ask you a question, sir?

2 CHAIR BRODERICK: Sure.

3 MR. MCCALPIN: Looking over the minutes of the last
4 meeting, I noticed that the inspector general suggested that
5 the protocol be published. Is this a publication of the
6 protocol, which I just received?

7 MR. FORTUNO: I think that the -- this is a
8 publication, but this is a publication of the protocol as a
9 final document in the policy of the corporation.

10 My understanding of what the inspector general was
11 proposing was that it be published for comment, and then be
12 taken up again to consider any comments that might be
13 received, and then acted upon.

14 So yes, this is a publication, but no, I don't
15 think it's the publication that the inspector general had in
16 mind when he made his comment.

17 CHAIR BRODERICK: We wanted to have it during our
18 life time, and that's what drove it.

19 All right, item six, there is nothing to be
20 addressed, and item seven is public comment.

21 I don't know if there is any public comment or not.

22

1 M O T I O N

2 CHAIR BRODERICK: Hearing none, I'll entertain a
3 motion to adjourn.

4 MR. ASKEW: So moved.

5 MS. FAIRBANKS-WILLIAMS: Second.

6 CHAIR BRODERICK: All those in favor?

7 (Chorus of ayes.)

8 CHAIR BRODERICK: Committee is adjourned. Thank
9 you.

10 (Whereupon, at 12:26 p.m., the meeting was
11 adjourned.)

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